

Nos. 18-36030, 18-36038, 18-36042, 18-36050,
18-36077, 18-36078, 18-36079, and 18-36080

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

CROW INDIAN TRIBE, et al.,
Plaintiffs-Appellees,

v.

UNITED STATES OF AMERICA, et al.,
Defendant-Appellant,

and

STATE OF WYOMING, et al.,
Intervenor-Defendants-Appellants.

On appeal from the United States District Court for the District of Montana
Case Nos. 17-0089, 17-0117, 17-0118, 17-0119, 17-0123, 18-0016
(Hon. Dana L. Christensen)

**MOTION OF PLAINTIFFS/APPELLEES CROW TRIBE OF INDIANS, ET AL.,
FOR AWARD OF ATTORNEY FEES AND COSTS**

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The Crow Indian Tribe, Crow Creek Sioux Tribe, Standing Rock Sioux Tribe, Lower Brule Sioux Tribe, Ponca Tribe of Nebraska, Piikani Nation, Crazy Dog Society, Hopi Nation Bear Clan, Northern Arapaho Elders Society, David Bearshield, Kenny Bowekaty, Llevando Fisher, Elise Ground, Arvol Looking Horse, Travis Plaited Hair, Jimmy St. Goddard, Pete Standing Alone, Nolan Yellow Kidney, and Gary Dorr (hereinafter Crow Tribe group) submit this motion for attorney fees and costs. This motion is made under Circuit Rule 39-1.6 and under the Endangered Species Act (ESA) 16 U.S.C. § 1540(g)(4) and/or the Equal Access to Justice Act (EAJA) 28 U.S.C. § 2412(d).

This motion seeks fees and costs expended in the district court and on appeal, in the amount of \$147,804.66.

After the filing of this motion, Plaintiffs-appellees will file a joint unopposed motion to transfer this motion to the District Court.

DISCUSSION OF LAW

I. PLAINTIFFS-APPELLEES ARE ENTITLED TO AN AWARD OF ATTORNEY FEES AND COSTS UNDER THE ESA.

To avoid duplication, the Crow Tribe group adopts the legal arguments of the Humane Society of the United States, Dkt. 214-1, (Sept. 4, 2020) Wild Earth Guardians, Dkt. 212-1, (Sept. 3, 2020), Alliance for the Wild Rockies, Dkt. 209-1, (Sept. 2, 2020), and Northern Cheyenne group of plaintiffs, Dkt. 205-1 (Aug. 28, 2020). As discussed in each of those filings, the Plaintiffs/Appellees are the prevailing parties

II. PLAINTIFFS-APPELLEES ARE ENTITLED TO AN AWARD OF ATTORNEY FEES AND COSTS UNDER THE EAJA.

Because Plaintiffs/Appellees are entitled to fees under the ESA, this Court need not determine whether the Plaintiffs/Appellees are also entitled to fees under the EAJA, but if this Court were to reach that issue, the Crow Tribe group would be entitled to fees under the EAJA.

To avoid duplication, the Crow Tribe group adopts the arguments of other Plaintiffs/Appellees set out in the filings listed in section I, *supra*.

Similar to Plaintiffs/Appellees Northern Cheyenne Tribe, et al., the United States could assert that the federally recognized tribes who are part of the Crow Tribe group would not be eligible under the EAJA, but that would not materially affect the recovery of attorney fees by the Crow Tribe group, because the Crow Tribe group would have brought this suit on behalf of the individual plaintiffs and the plaintiff organizations that unquestionably meet the eligibility criteria under the EAJA. Dkt. 205-1 at 6 (citing *Wash. Dept. of Wildlife v. Stubblefield*, 739 F. Supp. 1428, 1431 (W.D. Wash. 1989); *League for Coastal Protection v. Kempthorne*, case no. C05-0991-CW, 2006 WL 3797911 at *3 (N.D. Cal. Dec. 22, 2006)).

III. PLAINTIFFS/APPELLEES FEE REQUEST IS REASONABLE.

To avoid duplication, the Crow Tribe group adopts the legal arguments of other Plaintiffs/Appellees, and this section of this brief will apply that law to the facts regarding the Crow Tribe group.

The hourly rates charged to the Crow Tribe group are reasonable. As set out in the affidavit of Jeffrey Rasmussen, the rates charges to the Crow Tribe Group were only \$300 per hour for partners, \$200 per hour for associates, and \$125 per hour for law clerks. No fees were charged for paralegals, legal assistants, or other staff.

The attorneys for the Crow Tribe group have substantial experience representing tribes and tribal entities, including in environmental law cases. The Indian law issues contained within the complaint are particularly complex, and the religious freedom claim was innovative.

All time entries were made contemporaneously.

Time entries were further reduced to eliminate inquiries from the press, “client retention” contacts, entries for creation of a preliminary draft of the complaint, which had been completed by attorneys for the same law firm prior to 2017, and other work prior to 2017.

The fees sought in this case are solely those of the attorneys who represented all of the members of the Crow Tribe Group, and the request does not include fees for attorneys who represented individual members of the Crow Tribe Group, and does not seek fees for contact by Group counsel with counsel for individual members of the Group.

This motion is timely. This Court issued its decision on July 8, 2020, and because the United States is a party, any petition for rehearing was due on August 24, 2020. No petition for rehearing was filed, and therefore this request for fees was due on September 8, 2020. Fed. R. App. Proc. 40(a)(1); Circuit Rule 39-1.6(a).

/s/ Jeffrey S. Rasmussen

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CERTIFICATE OF SERVICE

I hereby certify that on this 8th day of September, 2020, a copy of the foregoing **MOTION FOR ATTORNEY FEES** was served via the ECF filing system which will send notification of such filing to all parties of record, other than Robert Aland who will be served via email as consented to by him.

/s/ Jeffrey S. Rasmussen

Jeffrey s. Rasmussen